

PLANNING DEPARTMENT
SHORELINE SETBACK APPLICATION

17 JAN 20 P15

RECEIVED

FOR OFFICIAL USE ONLY:	
SSD	201 <u>7</u> - <u>33</u>
Acceptance Date:	<u>1-20-17</u>
Website Posting Date:	<u>2-3-17</u>
Determination Date:	<u>3-2-17</u>
Planning Commission Date:	<u>3-14-17</u>
Expiration Date:	<u>3-14-20</u>
Planner Assigned:	<u>JK</u>

Instructions: File all information requested under Part A for processing the Determination of Applicability (§8-27.1), including signature page. Fill out Parts A and B if you know, due to proximity of the shoreline, that your parcel will require a Certified Shoreline Survey. If you are proposing a permitted structure or subdivision within the shoreline setback area fill in Part C. For applications involving a variance, complete Part D.

Applicant Information	
Applicant: Princeville Hanalei Plantation LLC	
Mailing Address:	c/o Belles Graham Proudfoot Wilson & Chun, LLP 4334 Rice Street, Suite 202, Lihue, Kauai, Hawaii 96766
Phone:	(808) 246-6962
Email:	mwg@kauai-law.com
Applicant's Status: (Check one)	
<input type="checkbox"/> Owner of the Property	(Holder of at least 75% of the equitable and legal title)
<input type="checkbox"/> Lessee of the Property	Lessee must have an unexpired and recorded lease of five (5) years or more from the date of filing of this application. If not, Owner(s) must provide a Letter of Authorization.
<input checked="" type="checkbox"/> Authorized Agent	Attach Letter of Authorization
Transmittal Date: <u>12/29/2016</u>	

Project Information (attach additional sheets, if necessary)	
County Zoning District:	RR-10/OPEN
Tax Map Key(s):	(4) 5-4-004:013
Land Area:	18.84 acres
Nature of Development: (Description of proposed structure or subdivision)	Apartment-Hotel and amenities

**NO PERMITS WILL BE ISSUED WITHOUT PLANNING COMMISSION ACCEPTANCE,
EXCEPT AS PROVIDED IN §8-27.8(c)(8)**

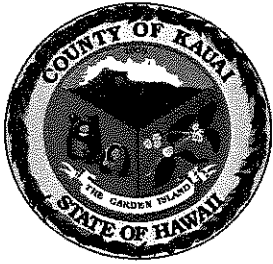
Part A

Shoreline Setback Determination of Applicability (§8-27.1)

Check all that apply, fill in applicable information. Any box checked must be accompanied by additional information, photos and/or documentation.

- ☒ Properties Abutting the Shoreline
☒ Project's approximate distance from shoreline: 60 feet
- ☐ Properties Not Abutting the Shoreline
☐ Project's approximate distance from shoreline: _____
- ☒ Additional Information:
☒ Closest distance of improvement(s) from Shoreline is approximately 60 ft.
☐ Number of parcels and type of improvements (roads, buildings, structures) between Shoreline and this parcel:

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- ☒ Topography (undulating, flat, slope, etc.) and ground elevation of subject parcel (Lowest and Highest elevations)

Slope. The proposed structures associated with the apartment-hotel project are located at an elevation of 40 to 60 feet. *See attached Coastal Hazard Assessment.

- ☒ Shoreline type (e.g. beach, dune, rocky, sandy with rocky outcropping, etc.)

Sandy with rocky outcroppings; outer reef barrier. *See attached Coastal Hazard Assessment.

- ☒ Artificially armored Shoreline
- ☒ If checked, what type of armoring (e.g. seawall, revetment, bulkhead): Breakwall.
- ☒ Is the armoring permitted/authorized? Yes, State of Hawaii.
- ☒ Date of authorization (attach copy of authorization letter): Act 217, SLH 1967.
- ☐ Is property in coastal floodplain (if checked, what zone)? _____
- ☒ Has this property been subject to coastal hazards in the past? (If checked, please describe)

See attached Coastal Hazard Assessment.

If the proposed structure or subdivision is within the shoreline setback area then, please be aware that if the determination of a structure is approved, the Applicant shall agree in writing that the Applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazards and coastal erosion, pursuant to §8-27.7(b)(2).

The requirements of the Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under §8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit. §8-27.7(b)(6).

Applicant's Signature

Signature

12/29/2016

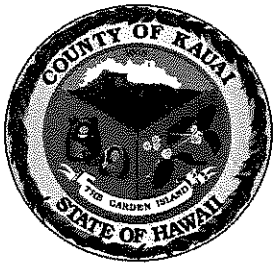
Date

Applicability (to be completed by Planning Department)

- ☒ ~~Setback Determination necessary.~~ Requirements of Ordinance No. 979 are applicable.

Planning Director or designee

1-23-17
Date



PLANNING DEPARTMENT SHORELINE SETBACK DETERMINATION

If **Part A** has been deemed that a Determination will be necessary, the additional information will be required for submission of this application.

Part B

Exemption Determination

☒ A non-refundable processing fee of **one hundred dollars (\$100.00)** shall accompany a request for determination. (§8-27.8(e))

☐ **Exemption 1**

In cases where the proposed structure or subdivision satisfies the following four criteria:

(A) In cases where the proposed structure or subdivision is located outside of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) 'V' or 'VE' flood zones;

(B) The proposed structure or subdivision is located at an elevation which is thirty (30) feet above sea level or greater;

(C) The applicant can demonstrate to the satisfaction of the Planning Director that the property is clearly adjacent to a rocky shoreline and that it will not affect or be affected by coastal erosion or hazards; and

(D) The shoreline setback shall be sixty (60) feet from the certified shoreline which has been established not more than twelve (12) months from the date of the application for the exception under this section.

☒ **Exemption 2**

In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

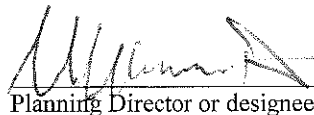
☐ **Exemption 3**

Those structures and uses found exempt in Table 3 (§8-27.7) (see pg. 5-6)

☐ Letter from the Department of Public Works stating that the proposed project does not constitute "Substantial Improvement," pursuant to §8-27.2

Exemption Determination (to be completed by Planning Department)

Pursuant to §8-27.3 the Kaua'i County Code, 1987 as amended, the Planning Department hereby certifies the proposed structure(s) or subdivision(s) as exempt from those shoreline setback determination requirements established under §8-27.8.


Planning Director or designee


Date

EXHIBIT "A"

OWNER'S AUTHORIZATION

I. OWNER.

Name: OHANA HANAIEI, LLC,
a Delaware limited liability company
Address: 8880 Rio San Diego Drive, Suite 345
San Diego, California 92108

Attention: Mr. Alex Hill, Executive Vice President
Telephone: (619) 281-8573
Email: ahill@ohanare.com

With cc to: Mr. Eric Crispin, Vice President
745 Fort Street Suite 1450
Honolulu Hawaii 96813
Telephone: (808) 218-6707
Email: ecrispin@ohanare.com

II. AUTHORIZED AGENTS.

A. Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.
Ian K. Jung, Esq.

Address: Belles Graham Proudfoot Wilson & Chun, LLP
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962
Facsimile: (808) 245-3277
Email: mwg@kauai-law.com
mjb@kauai-law.com
ikj@kauai-law.com

B. Name: Princeville Hanalei Plantation, LLC,
a Delaware limited liability company

Address: c/o The Resort Group LLC
1100 Alakea Street, Suite 2500
Honolulu, Hawaii 96813
Attention: Mr. Jeffrey Stone, President

Telephone: (808) 531-9761
Email: jstone@theresortgroup.com

III. PROPERTY.

Stark Lot (18.60 ac.) (formerly Land Court Application No. 1771)
Hanalei, Kauai, Hawaii
Kauai Tax Map Key No. (4) 5-4-004:013 (por.)

Lot 4 (0.24 ac.) (formerly Land Court Application No. 1724)
Hanalei, Kauai, Hawaii
Kauai Tax Map Key No. (4) 5-4-004:013 (por.)

V. AUTHORIZATION.

The Owner hereby authorizes the Authorized Agents to act on the Owner's behalf and to file and process on the Owner's behalf any and all applications necessary to obtain governmental permits relating to the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, shoreline setback determinations, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.
2. Permits issued by the Department of Health of the State of Hawaii.
3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii, including shoreline certifications.
4. Permits issued by the Land Use Commission of the State of Hawaii.

DATED: 28 DECEMBER 2016

OWNER:

OHANA HANA LEI LLC,
a Delaware limited liability company


By 
Its VICE PRESIDENT

EXHIBIT "B"

APPLICANT'S AUTHORIZATION

I. APPLICANT.

Name: PRINCEVILLE HANAIEI PLANTATION, LLC,
a Delaware limited liability company

Address: c/o The Resort Group LLC
1100 Alakea Street, Suite 2500
Honolulu, Hawaii 96813

Attention: Mr. Jeffrey Stone, President

Telephone: (808) 531-9761

Email: jstone@theresortgroup.com

II. AUTHORIZED AGENT.

Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.
Ian K. Jung, Esq.

Address: Belles Graham Proudfoot Wilson & Chun, LLP
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962

Facsimile: (808) 245-3277

Email: mwg@kauai-law.com
mjb@kauai-law.com
ikj@kauai-law.com

III. PROPERTY.

Stark Lot (18.60 ac.) (formerly Land Court Application No. 1771)
Hanalei, Kauai, Hawaii
Kauai Tax Map Key No. (4) 5-4-004:013 (por.)

Lot 4 (0.24 ac.) (formerly Land Court Application No. 1724)
Hanalei, Kauai, Hawaii
Kauai Tax Map Key No. (4) 5-4-004:013 (por.)

IV. AUTHORIZATION.

The Applicant hereby authorizes the Authorized Agent to act on the Applicant's behalf and to file and process on the Applicant's behalf any and all applications necessary to obtain governmental permits relating to the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, shoreline setback determinations, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.
2. Permits issued by the Department of Health of the State of Hawaii.
3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii, including shoreline certifications.
4. Permits issued by the Land Use Commission of the State of Hawaii.

DATED: 12/27/14.

APPLICANT:

PRINCEVILLE HANAIEI PLANTATION, LLC,
a Delaware limited liability company

By: Commercial Property Advisors, Inc.
Its Manager

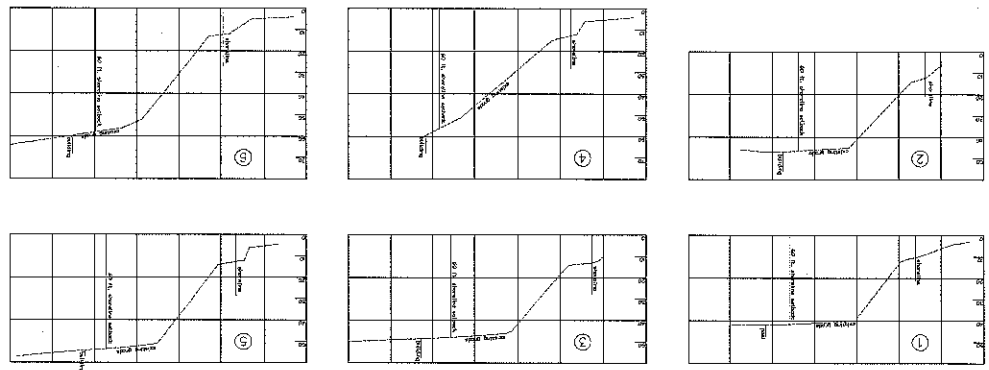
By [Signature]

Its V. President / Controller

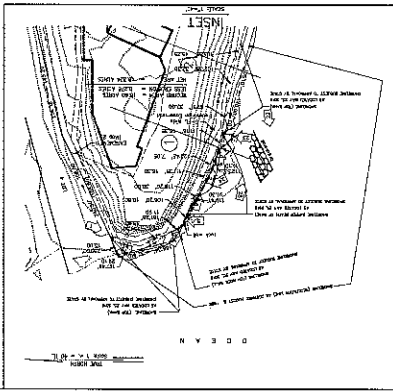
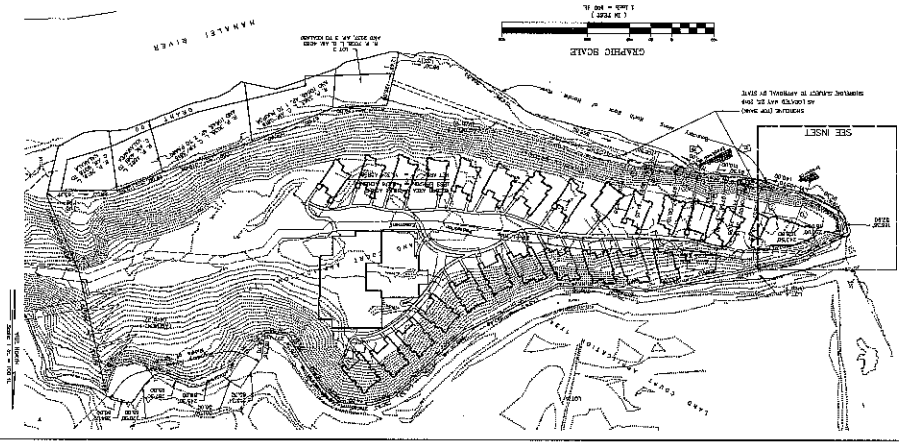
Sheet 1 of 2
 Date: 12/22/2016
 Project: 1771
 Title: MAP SHOWING
 SITE PLAN AND
 SHORELINE SURVEY
 PARCEL 13
 LAND COURT APPLICATION 1771
 Client: The Resort Group
 Date: December 23, 2016

1771
 Title: MAP SHOWING
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 SHORELINE SURVEY
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1771
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CROSS SECTION
 VERTICAL SCALE: 1" = 20'
 HORIZONTAL SCALE: 1" = 20'



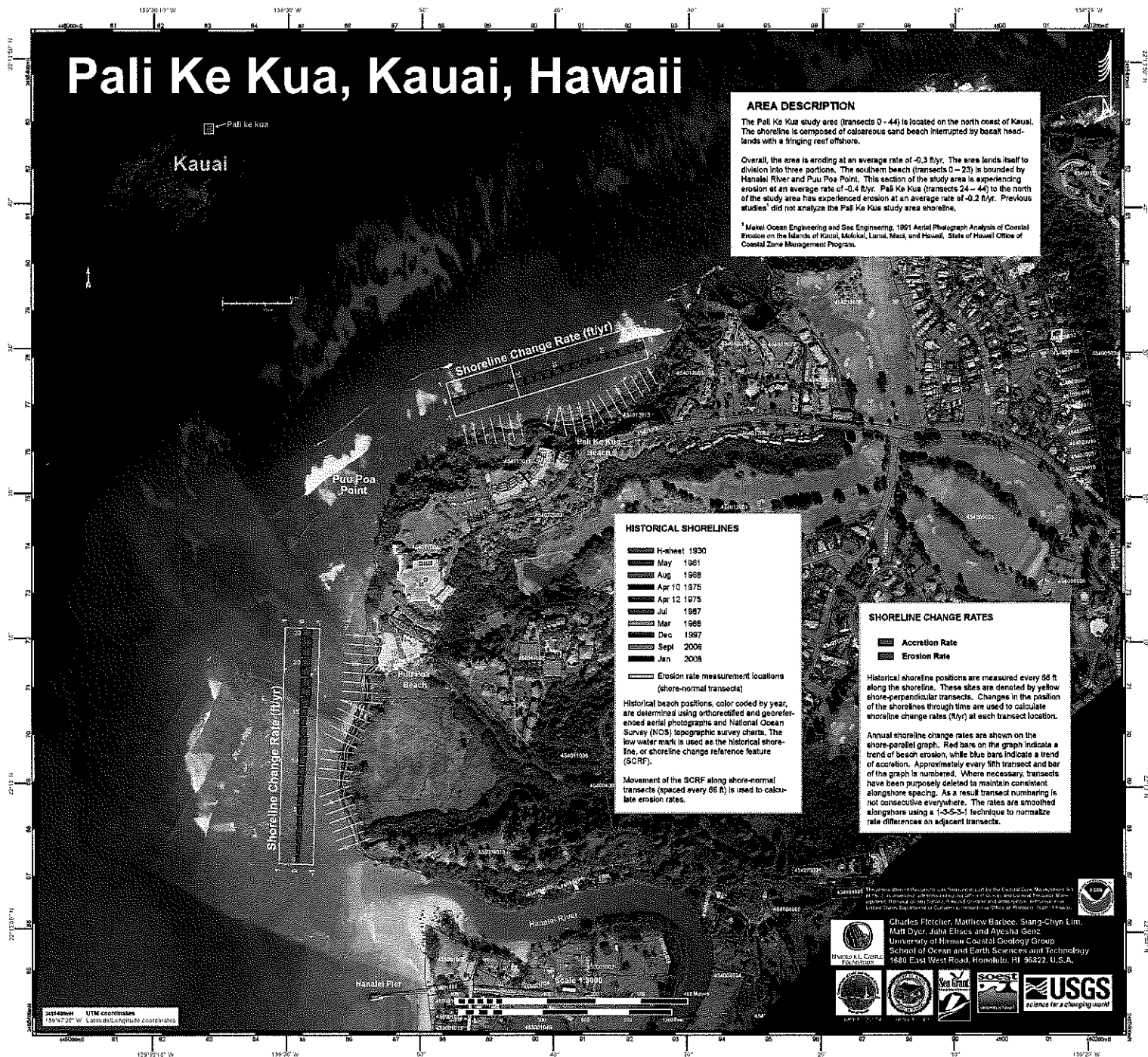


EXHIBIT "E"

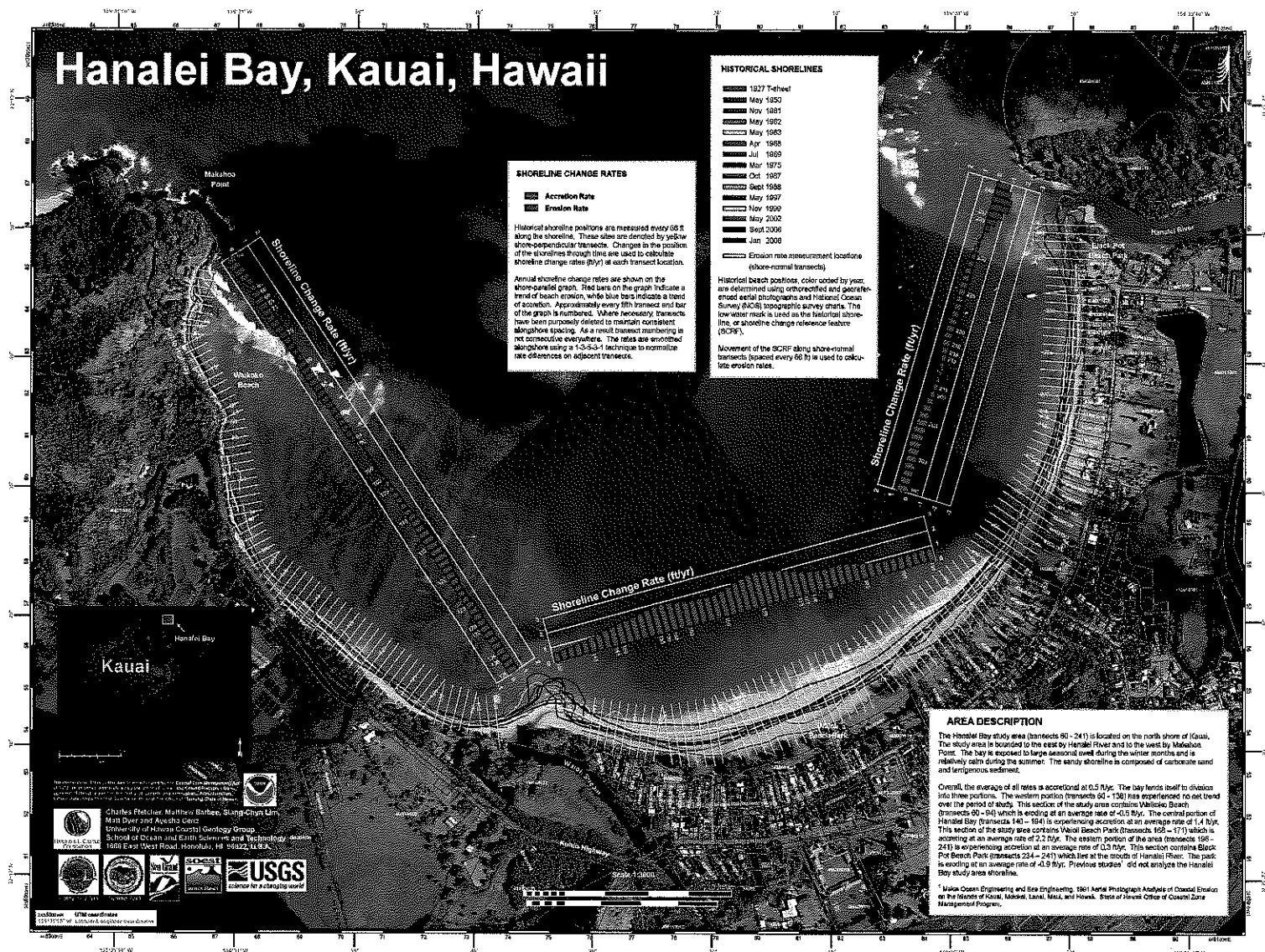


EXHIBIT "F"

FILE TOO LARGE TO SCAN

**RECORD ON FILE AT PLANNING
DEPARTMENT**

Bernard P. Carvalho, Jr.
Mayor



Michael A. Dahilig
Director of Planning

Wallace G. Rezentes, Jr.
Managing Director

Ka'aina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Lihue, Hawai'i 96766
TEL (808) 241-4050 FAX (808) 241-6699

MEMORANDUM

To: File
SSD-2017-33

Fr: Michael A. Dahilig
Director of Planning

Date: 3/1/2017

RE: Evaluation of Exemption Determination Request

Applicant has requested a shoreline setback exemption determination pursuant to Section 8-27.3(a)(2):

In cases where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

In support of their request for exemption determination, applicant has submitted maps, and a 39-page "Coastal Hazard Assessment" prepared by Sea Engineering, Inc., not including appendices.

Background:

The proposed project received zoning and SMA approvals in the 1980's. However, the current proposed siting of the structures bear upon this determination evaluation. The request for a "Type 2" exemption is significant, whereby some of the elements of the project may be considered grandfathered in due to the existing and valid permits, the granting of this particular type of exemption would clear any question whether the shoreline setback process has been met in any type of form.

From the materials submitted by Sea Engineering, Inc., the overall site's elevation ranges from 28 feet at the far western tip of the headland to greater than 60 feet. Its slope base below the coastal access path is a mixture of boulders, sand, and a clay bank. Previous borings taken on the bluff indicates stratum underlying the top of the ridge is composed of weathered rock and clay, sitting atop moderately to slightly weathered basalt, sitting atop medium hard to hard

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basalt. Hard basalt is present from 20 to 30 feet above MSL down through the deepest depths sampled.

The Coastal Hazard Assessment addresses bluff stability in Section 2.5 (Coastal Land Forms). Section 2.5 of the report discussed the hard basalt core of the ridge line that extends 20-30 feet above mean sea level and is either the bluff face or emergent outcrops along the full length of the shoreline. Additionally, the location of the structures is in Flood Zone X which is determined to be outside of the 0.2% annual chance floodplain (500-year flood).

The applicant applied for State certified shoreline, under Reference No. KA-412. A site visit occurred with DLNR representative Ian Hirokawa, DAGS representative Reid Sairot, Planning Department representatives Michael Dahilig, Ruby Pap, and Chance Bukoski. Members from the public included Caren Diamond and Rain Regush. The applicant's representatives included Chris Conger of Sea Engineering, Inc. and Hanalei Hamasura.

During the site visit, the shoreline location previously proposed by the DLNR shoreline specialist, as a part of the 2013 shoreline certification application, was identified on the ground and verified by the State shoreline representatives. The shoreline location was discussed by the group and confirmed by the State team. Several encroachments were identified by the State team and require resolution prior to certification. The shoreline was rejected on the December 23, 2016 of the OEQC Environmental Bulletin due to the time requirement in the HAR that resulted incomplete document for the encroachments and is pending the application's resubmittal for easement documentation.

The shoreline location as identified on the map for Reference No. KA-412 was the State's recommended location for the 2013 shoreline application, was identified on the ground during the site visit on May 25, 2016, and was verified on the map by the State Surveyor and State Shoreline Administrator as a part of the site visit as discussed in the State's letter dated December 12, 2016.

The proposed shoreline location, as recommended by the State in 2013 and confirmed during the 2016 site visit is referenced for the highest wash of the highest waves, where highest refers to distance mauka or the inundation extreme. The topographic map provides reference for elevations at the proposed improvements and the character of ground, including slopes and terrace locations.

Comments from the public, particularly those received on February 22, 2017 raise several concerns regarding shoreline issues, coastal hazards, bluff stability and setback location.

Discussion and Analysis:

Given the above ordinance, a positive exemption determination mandates review whether the supporting documentation confirms the proposed structures will not:

- 1) affect beach processes;
- 2) impact public beach access;
- 3) contributes to or be affected by coastal erosion; or
- 4) contributes to or be affected by coastal hazards, excluding natural disasters.

I. Affect Beach Processes

The documentation reveals the location of the structures will not affect beach processes. In evaluating effects, the factors for consideration include: proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Although the documentation reveals structure proximity sixty (60) feet from the shoreline at its closest point, with no properties in between the structures and the shoreline, the documentation reveals a steep topographic basalt scarp leading with the lowest structures proposed thirty (30) feet above MSL.

The topography leading to the high elevation of the structures compared to mean sea level places these structures in a manner whereby the Department agrees no beach processes would be affected as a consequence of construction. Any concerns related to construction impeding natural beach processes should remain allayed. Therefore, an exemption is warranted given this consideration.

II. Impact Beach Access

The proposed structures will not impact beach access. Again, in evaluating effects, the factors for consideration include: proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Previous owners of the property have provided a Grants of Easement, filed with the Land Court on September 25, 1984, identifying current public beach access easements as required under the existing SMA permit. These easements run mauka to makai through the parcel, and also along the base of the basalt scarp up the Hanalei River. As mentioned above, shoreline certification remains in question due to an identified encroachment (namely a rock retaining wall) where pedestrian access currently takes place.

As this evaluation hinges upon whether the "proposed structures" will impact public access, the Department agrees the structures proposed on the site plan do not impact or impede the existing public beach access. Any concerns related to construction blocking beach access should remain allayed. Therefore, an exemption is warranted given this consideration.

III. Contributes to Coastal Erosion

The proposed structures will not contribute to coastal erosion. Again, in evaluating effects, the factors for consideration include: proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Per the report, the site's slope base below the coastal access path is a mixture of boulders, sand, and a clay bank. Above the path, the site's underlying stratum is erosion resistant and sits *beneath* all the proposed structures. Boring data clearly identifies the character and location of this stratum, which extends higher than the Base Flood Elevation identified by FEMA. Moreover, the report documents a lack of marine or riparian erosion on the landward side of the foot path. As such, there is no evidence of coastal or river processes eroding the slope where the proposed structures will sit on the bluff.

Furthermore, Section 2.3 of the report documents the significant spatial buffer between the documented coastal erosion on the shoreline and the location of the proposed structures. This lateral gap along with the stable geological formation is well removed from the erosion actions and accompanying coastal beach processes.

The geotechnical integrity of the emplaced lava flows beneath the proposed project has been raised through public comment. Although the erosional processes related to mass failure are prevalent throughout the island given the volcanic origins of the Hawaiian Chain, the analysis required is whether the structures would be affected by or contribute (i.e. exacerbate) the already present risk. Given the public comment, we have evaluated portions of the report that analyze the basic character of the terrestrial stratum.

As mentioned above, the primary substrate, basalt, is erosion resistant and underlies all the proposed structures. The report also shows no evidence of marine or riparian erosion on the upper slopes, adjacent to the proposed structures. Therefore, the Department believes the underlying geologic integrity of the area is generally stable, and proper engineering can insure the structures are anchored to this primary substrate, as would be required under structural engineering codes.

As this evaluation hinges upon whether the "proposed structures" will either be affected or contribute to coastal erosion, the Department agrees the proposed structures would not exacerbate existing conditions related to already-occurring coastal erosion any affects to the structures are not beyond what would be baseline risk for any comparable inland structures and similar environmental conditions (i.e. houses built on a basalt scarp). Any concerns related to the structures increasing the rate of coastal erosion or having particular susceptibility to erosional mass failure remain allayed. Therefore, an exemption is warranted given this consideration.

IV. Contributes to Coastal Hazards

The proposed structures will not contribute to the areas susceptibility to coastal hazards. Again, in evaluating effects, the factors for consideration include: proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

The report discusses the coastal hazards identified by the U.S. Geologic Survey (USGS), a Federal agency specializing in geologic and hazard documentation. The USGS, and the report, identify and discuss the following coastal hazards: tsunami, stream flooding, high waves, storms, and, sea level, and seismic effects. As Section III, above, discusses erosion, those hazards are not discussed in this section.

In addition, the report also addresses the FEMA's Flood Insurance Rate Map, administered by the State Flood Plain Management Office, documentation of previous coastal flood hazards.

The County of Kauai's Erosion Study, produced by the University of Hawaii, was also reviewed as part of the report. In sum, these documents and the report discussion represent all coastal hazards as identified by Federal, State, and County agencies.

Data informing these documents and reports includes all previous storms and hurricanes, tsunamis, extreme wave events, erosion, stream flooding, and sea-level rise.

Base Flood Elevation, as identified by FEMA is based on the highest flood elevation of all previous events and tsunami modeling results for the site. Current Base Flood Elevations for the site range from +10 ft to +14 ft MSL, which is 16 ft to 47 ft lower than the proposed structures, and lower than the upper reaches of the hard basalt core of the ridgeline. In addition to these coastal hazards, the Sea Engineering report also analyzes potential effects of sea-level rise at the site based on NOAA projections.

The location of the proposed structures, high on the terrace at elevations 30-60 feet above mean sea level, as significantly higher than any previously recorded tsunami run-up elevations.

Additionally, as mentioned above the location of the structures is in Flood Zone X, which is determined to be outside of the 0.2% annual chance floodplain (500-year flood). When reviewing this project for impacts of sea level rise, the proposed structures are well removed from any projected impacts of up to a 6 foot sea level rise. This area is also well removed from the coastal hazards assessed by the USGS Atlas.

The Coastal Hazard Assessment addresses the bluff stability in Section 2.5 (Coastal Land Forms). The hard basalt core of the ridge line extending 20 to 30 feet above mean sea level is exposed as the bluff face along with the emergent outcrops running the full length of the shoreline. Per the report, this stratum is erosion resistant and sits beneath all the proposed structures. Boring data clearly identifies the character and location of this stratum, which extends higher than the Base Flood Elevation identified by FEMA. Moreover, the report documents a lack of marine or riparian erosion on the landward side of the foot path, which is to say there is no evidence of coastal or river processes eroding the slope upon which the proposed structures will sit. As such, bluff failure does not pose a hazard that may affect the subject proposal.

As this evaluation hinges upon whether the "proposed structures" will contribute to or be affected by coastal hazards, the Department agrees the proposed structures would not exacerbate existing conditions related to the baseline state of risk to coastal hazards currently characterizing the area, and any affects to the structures are not beyond what would be baseline hazard risk for

any comparable inland structures under similar non-coastal environmental conditions (i.e. houses rained upon, wind damage, etc. and not storm surge or tsunami). Any concerns related to the structures increasing the area's risk to coastal hazards or having particular susceptibility to coastal hazards remain allayed. Therefore, an exemption is warranted given this consideration.

Conclusion:

After a review of the Exemption Application for a Shoreline Setback Determination, as well as the comments received by the public, the Department finds the following:

- The proposed structures qualify for Exemption No. 2 given the following:
 - 1) It will not affect beach processes;
 - 2) It will not impact public beach access;
 - 3) It will not contribute to an increased rate of coastal erosion; and
 - 4) It will not contribute to increasing risk and susceptibility to coastal hazards, excluding natural disasters.

Therefore, pursuant to my authority as Director under Section 8-27.3(a)(2), Kauai County Code the applicant has demonstrated to my satisfaction the proposed structures will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters, and shall be exempted from Article 8-27, Kauai County Code.

Furthermore, given DLNR's rejection of the shoreline certification application given the encroachment sitting makai of a basalt face, the shoreline certification line as proposed including areas predominantly consisting of stable basalt faces, and the predominant underlying substrate's basalt composition, the Department would be inclined to consider evidence suggesting the shoreline's consideration as a "rocky shoreline" pursuant to Article 8-27, Kauai County Code.